

# **Exhibit 42**

## **HOW TO APPEAL A TRAFFIC MATTER FROM BUFFALO TRAFFIC VIOLATIONS AGENCY TO THE ERIE COUNTY COURT**

These guidelines are intended to help you understand the process through which your case can be reviewed on appeal.

If you believe that the Traffic Violations Agency has erred in your case after trial, you may appeal the Conviction of a Traffic matter from the Traffic Violations Agency. **An Appeal is not a new trial. It is a review of the court proceedings and documents from the Agency Court.** You may only submit evidence that was presented at the trial or proceedings held in the Agency Court.

The next page is a general checklist which will guide you through the process, step-by-step. However, please be sure to read the entire packet as you complete each task.

If, after reading these instructions, you have any questions regarding the appeal process, you may contact the New York State Court Help Center, (716) 845-1816. The staff of the Help Center may not provide legal advice or provide opinions about your case. The staff can only provide you with appeal procedures and processes.

Please note that the Court has the option to extend timelines as indicated in this document. Requests for extensions should be provided to the County Court Judge assigned to your Appeal, in writing.

If you still wish to proceed with the appeal, complete and file the following paperwork:

### **STEP I: FILE NOTICE OF APPEAL**

- ☐ Complete two (2) original copies of the Notice of Appeal form (attached) within 30 days of the judgment.
- ☐ Complete Affidavit of Service (attached) (To be completed by a person over 18 not a party to the action).
- ☐ File an original Notice of Appeal and Affidavit of Service with the Erie County Clerk.
- ☐ Serve an original and one copy of the Notice of Appeal on the Buffalo Traffic Violations Agency. The original is retained by the Agency and the copy is served on the Traffic Prosecutor.

**STEP II: PERFECTING YOUR APPEAL**

- ☐ Complete Affidavit of Errors and Request to Prepare Record on Appeal form (attached).
- ☐ Complete Affidavit of Service (attached).
- ☐ Serve **original** Affidavit of Errors and **original** Affidavit of Service with the Erie County Court.
- ☐ Serve two (2) copies of Affidavit of Errors on the Traffic Violations Agency.
- ☐ Contact a certified court reporter to request your transcript (instructions attached). You are responsible for the payment of two transcripts; one of which will be sent to you and the other will be filed with the Buffalo Traffic Violations Agency. You must serve a copy of your transcript to the County Court Judge assigned to your Appeal.

\*The Buffalo Traffic Violation Agency will file the Record on Appeal with the County Court.

**STEP III: NOTICE OF ARGUMENT and FILING DEADLINES**

The Erie County Court will advise, in writing, of the specific filing deadlines.

If Oral Argument has been requested, County Court will advise both parties of the court date.

Throughout the appellate process, all documents which you file with the County Clerk, and the County Court must also be served upon the Buffalo Traffic Violation Agency.

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

NOTICE OF APPEAL

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant

\_\_\_\_\_  
TAKE NOTICE that the Appellant hereby appeals to the County Court of Erie County  
from the conviction rendered on \_\_\_\_\_ finding the defendant guilty  
(Date of Conviction)  
of \_\_\_\_\_ and  
(Charge[s] convicted)  
sentence rendered on \_\_\_\_\_ and from every intermediate Order therein made  
(Date of Sentence)  
in the Buffalo Traffic Violations Agency.

Dated: \_\_\_\_\_

To: Erie County Clerk  
92 Franklin St  
Buffalo, New York 14202

\_\_\_\_\_  
(Name of Appellant)

Buffalo Traffic Violations Agency  
65 Niagara Square, Room 115  
Buffalo, New York 14202

\_\_\_\_\_  
(Address of Appellant)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Telephone Number)

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF SERVICE  
OF NOTICE OF APPEAL

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.

\_\_\_\_\_, being duly sworn, deposes and says:  
(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following  
address: \_\_\_\_\_

2. On \_\_\_\_\_, 20\_\_\_\_, I served the within NOTICE OF APPEAL  
upon the Erie County Clerk, 92 Franklin Street, Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

and upon the Buffalo Traffic Violations Agency, 65 Niagara Square, Room 115, Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

(File this completed form with the Erie County Clerk, 92 Franklin Street, Buffalo, NY 14202)

**AFFIDAVIT OF ERRORS and BUFFALO TRAFFIC VIOLATIONS AGENCY RECORD ON APPEAL:**

Following the filing of the Notice of Appeal, the County Court will notify you how many days you have to perfect your Appeal. Your Appeal is perfected by filing the transcript of proceedings and Affidavit of Errors (form attached) with the County Court. The Affidavit of Errors must be mailed or personally served on the County Court and the Buffalo Traffic Violations Agency.

The appellant should complete an **Affidavit of Service** (form attached) and file the original **Affidavit of Errors** and **Affidavit of Service** with the County Court.

An **Affidavit of Errors** is your statement outlining the errors that you believe were made by the Buffalo Traffic Violations Agency.

The **Affidavit of Errors** also notifies the Buffalo Traffic Violations Agency to prepare the **Record on Appeal**. The **Record on Appeal** is the Agency's summary of the facts, evidence, and responses to the alleged errors as listed in the Affidavit of Errors. The **Record** will also include all pleadings and relevant documents within the Agency's case file.

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF ERRORS and  
REQUEST TO PREPARE RECORD ON APPEAL

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.  
\_\_\_\_\_

TO: BUFFALO TRAFFIC VIOLATIONS AGENCY

I, \_\_\_\_\_, being duly sworn, depose and say:

1. I am the Defendant / Appellant and I am appealing my judgment of conviction rendered by the Buffalo Traffic Violations Agency on \_\_\_\_\_.  
(Date of Conviction)

2. I have attached a general outline of the errors which I believe occurred in the Buffalo Traffic Violations Agency relative to my conviction.

3. I believe these errors warrant a reversal of my conviction and/or remand of this matter to the Buffalo Traffic Violations Agency for further proceedings.

4. I hereby request that the Record on Appeal be prepared and forwarded to the County Court

5. I understand that the matter was audio recorded and a transcript of the proceedings will need to be prepared. **I understand that I will be responsible for the payment of two transcripts;** one of which will be sent to me and the other will be filed with the Justice Court for inclusion in the Record on Appeal. **I understand that I will select a transcriber from the approved list.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Defendant's Signature)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

To: Erie County Court  
25 Delaware Ave.  
Buffalo, New York 14202

Buffalo Traffic Violations Agency  
65 Niagara Square, Room 115  
Buffalo, New York 14202

(After service, file this completed form with the. Erie County Clerk, 95 Franklin St., Buffalo, NY 14202)

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

AFFIDAVIT OF SERVICE  
AFFIDAVIT OF ERRORS and  
REQUEST TO PREPARE RECORD ON APPEAL

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.

\_\_\_\_\_, being duly sworn, deposes and says:  
(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following

address: \_\_\_\_\_

On \_\_\_\_\_, 20 \_\_\_\_, I served the within REQUEST TO PREPARE THE RECORD ON  
APPEAL and AFFIDAVIT OF ERRORS upon the Erie County Court, 25 Delaware Ave., Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

and upon the Buffalo Traffic Violations Agency, 65 Niagara Square, Room 115, Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

(After service, file this completed form with the. Erie County Clerk, 95 Franklin St., Buffalo, NY 14202)



### III. NOTICE OF ARGUMENT AND BRIEF

After the **Record** is filed with the Erie County Clerk, you must complete the following steps:

- < Complete the **Notice of Argument** form (attached) and indicate if you are or are not requesting Oral Argument before the Court. Leave the date and time blank on the Notice of Argument form. Even if you request Oral Argument, the County Court may determine that Oral Argument is not necessary and may decide the appeal on the submitted papers.
- < Prepare a **Brief and Memorandum of Law**. The Brief and Memorandum of Law is your detailed statement listing the specific errors you believe were made in the Justice Court. Include or attach any legal authority which you believe supports your argument.
- < Serve a copy of the **Notice of Argument** and the **Brief and Memorandum of Law** on the Buffalo Traffic Violations Agency and complete an Affidavit of Service.
- < File the **Notice of Argument** (original and two copies), the **Brief and Memorandum of Law**, and **Affidavit of Service** with the County Court.

If the Court sets a date for oral argument, you will be notified by mail of that date. The Court will also notify the Buffalo Traffic Violations Agency of the date of oral argument.

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

NOTICE OF ARGUMENT

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.

(Select one box):

☐ **I DO REQUEST ORAL ARGUMENT.**

I understand that if my request for oral argument is not granted, the appeal will be decided on the papers that I and the responding party have submitted.

I further understand that if my request for oral argument is granted, this is not an opportunity for a re-trial and that I can not produce new evidence.

☐ **I DO NOT REQUEST ORAL ARGUMENT**

I understand that the appeal will be decided on the papers which I and the responding party have submitted.

TAKE NOTICE that the Appeal in the above entitled action will be brought for argument

before this Court at the next term thereof, to be held at:

Erie County Courthouse  
25 Delaware Ave.  
Buffalo, New York 14202

on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m. of that day.

(Do not complete this section - this will be completed by the court if needed)

Dated: \_\_\_\_\_

To: Erie County Court  
25 Delaware Ave.  
Buffalo, New York 14202

Buffalo Traffic Violations Agency  
65 Niagara Square, Room 115  
Buffalo, New York 14202

(After service, file this completed form with the. Erie County Clerk, 95 Franklin St., Buffalo, NY 14202)

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

BRIEF AND  
MEMORANDUM OF LAW

Vs.

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.  
\_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, depose and say:

1. I am the Defendant / Appellant and I am appealing my judgment of conviction rendered  
by the Buffalo Traffic Violations Agency on \_\_\_\_\_.  
(Date of Conviction)

2. **I have attached a detailed statement concerning the specific errors I believe were made  
in the Buffalo Traffic Violations Agency, my specific arguments and the legal authority (if any) which  
support my statement.**

3. I believe these errors warrant a reversal of my conviction and/or remand of this matter to the  
Buffalo Traffic Violations Agency for further proceedings.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Defendant's Signature)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

To: Erie County Court  
25 Delaware Ave.  
Buffalo, New York 14202

Buffalo Traffic Violations Agency  
65 Niagara Square, Room 115  
Buffalo, New York 14202

(After service, file this completed form with the Erie County Clerk, 95 Franklin St., Buffalo, NY 14202)

STATE OF NEW YORK:  
CITY OF BUFFALO:

COUNTY OF ERIE  
BUFFALO TRAFFIC VIOLATIONS AGENCY

\_\_\_\_\_  
The People of the State of New York

Vs.

AFFIDAVIT OF SERVICE  
(NOTICE OF ARGUMENT,  
BRIEF, and MEMOGRANDUM OF LAW

Case No. \_\_\_\_\_

APP no. \_\_\_\_\_

\_\_\_\_\_,  
Defendant.

\_\_\_\_\_, being duly sworn, deposes and says:

(Name of person serving document)

1. I am not a party to this action, am over the age of 18 years and reside at the following

address: \_\_\_\_\_

2. On \_\_\_\_\_, 20 \_\_\_\_, I served the within (Select all that apply)

- ☐ NOTICE OF ARGUMENT
- ☐ BRIEF
- ☐ MEMORANDUM OF LAW
- ☐ OTHER \_\_\_\_\_

(Name[s] of documents)

upon the Erie County Court, 25 Delaware Ave., Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

and upon the Buffalo Traffic Violations Agency, 65 Niagara Square, Room 115, Buffalo, NY 14202 by:

- ☐ (FIRST CLASS MAIL) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York.
- ☐ (PERSONAL SERVICE) personally delivering a true copy of the same.
- ☐ (CERTIFIED MAIL, RETURN RECEIPT REQUESTED) depositing a true copy of the same in a post-paid properly addressed envelope at a post office under the exclusive care and custody of the United States Postal Service within the State of New York by certified mail, return receipt requested.

Dated: \_\_\_\_\_

(Signature of Person Providing Service)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_.

Notary Public

#### **IV. DECISION AND ORDER ON APPEAL**

After all of the documents have been received by the Court, the time to submit a Reply has expired, and oral argument, if granted, has taken place, the County Court Judge is ready to decide the appeal. A copy of the Decision will be mailed to all parties or attorneys.

#### **V. IMPORTANT INFORMATION**

< If you fail to comply with these guidelines, the County Court may dismiss the appeal.

< The following references may be helpful when preparing your appeal:

- **Criminal Procedure Law 460.10 and 460.70**
- **Uniform Justice Court Act, Article 17 - Appeals**
- **Uniform Rules of the State of New York - Trial Courts, Section 200.33**

< Unless the County Court issues a Stay of the sentence, the defendant will be subject to sanctions imposed by the Department of Motor Vehicles including, but not limited to driver's license suspension or revocation and the defendant will be required to pay any fines and surcharges imposed by the Buffalo Traffic Violations Agency.

**BUFFALO TRAFFIC VIOLATIONS AGENCY**  
**PROCEDURE FOR REQUESTING TRANSCRIPTION PURPOSES**

If you wish to obtain a transcript of a digitally recorded proceeding, you must submit a written request and indicate the following:

1. The name of the Plaintiff and Defendant
2. The date(s) of the Court proceeding
3. The name of the Judicial Hearing Officer
4. The Case Number(s) of the proceeding
5. The name, address and daytime telephone number of the party requesting the transcript
6. The name, address and telephone number of the transcription agency where the audio file should be forwarded

The transcription agency must have the appropriate software to transcribe the audio file. A list of approved transcription agencies is attached. You may also find a list of approved transcription agencies on line at [www.courts.state.ny.us/howdoi/transcripts.shtml](http://www.courts.state.ny.us/howdoi/transcripts.shtml). Questions regarding the cost and deposit involve should be addressed to the transcription agency.

The audio file will be marked "TRANSCRIPTION PURPOSES ONLY." It will be duplicated within seven (7) to ten (10) days and forwarded to the transcription agency. Upon completion, the agency will forward the transcript directly to you. Only a party or their attorney can request a transcript.

Transcript requests must be received *in writing* by the Agency **only** through a certified court reporter via U.S. First-Class mail or email. Have your court reporter contact:

Buffalo Traffic Violations Agency  
65 Niagara Square  
Room 115  
Buffalo, NY 14202  
BTVATranscriptRequests@buffalony.gov

Buffalo Traffic Violations Agency  
65 Niagara Square  
Room 115  
Buffalo, NY 14202  
BTVATranscriptRequests@buffalony.gov

TRANSCRIPT INFORMATION SHEET

TRANSCRIPTION AGENCY: \_\_\_\_\_ PARTY REQUESTING TRANSCRIPT: \_\_\_\_\_

NAME:

NAME:

ADDRESS:

ADDRESS:

PHONE NO.:

DAYTIME PHONE NO.:

PLAINTIFF:

ATTORNEY FOR PLAINTIFF:

DEFENDANT:

ATTORNEY FOR DEFENDANT:

CASE NO.:

DATE OF PROCEEDING:

RECORDING TIME:

JUDICIAL HEARING OFFICER:

Witness(es):

Please note all proceedings contained on the enclosed recording(s) **are confidential**. Upon completion of the transcript, the audio file must be returned to the Buffalo Traffic Violations Agency, 65 Niagara Square, Room 115, Buffalo, NY 14202; or destroyed.

DIGITALLY RECORDED PROCEEDINGS

I am requesting an audio for transcription purposes of the following digitally recorded proceedings:

Defendant's Name: \_\_\_\_\_

Name of the Judicial Hearing Officer: \_\_\_\_\_

Case No.: \_\_\_\_\_

Date(s) of Proceedings: Person Requesting audio file: \_\_\_\_\_

Address: \_\_\_\_\_

Daytime Telephone No.: \_\_\_\_\_

Please forward completed audio  
file to Transcription Agency:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

ELECTRONIC RECORDING TRANSCRIPTION SERVICES – 06/01/19

All services have agreed to comply with the Standard Transcript Specifications (section 108.3 of the Rules of the Chief Administrator) and to have their transcripts subject to random accuracy audits by the Unified Court System (UCS) and/or the Buffalo Traffic Violations Agency. The services on this list are not employed as electronic recording transcribers by the UCS or the Buffalo Traffic Violations Agency and each sets their own rates. The Buffalo Traffic Violations Agency does not recommend particular services.

To have a transcript produced from an electronically recorded matter, please contact one of the transcription services listed below. Please note that these services are not employed as transcribers by the Unified Court System; they are independent contractors and establish their own rates. Services on this list have agreed to have their transcripts subject to random auditing by the court system and to follow the Standard Transcript Specifications set forth in the Rules of the Chief Administrator. These lists are provided merely for convenience and do not constitute a recommendation.

Visit the NYS Courts official site of [TRANSCRIPTION SERVICES](#)

Other local approved transcribers:

Karen Swartwood [karenglenns@roadrunner.com](mailto:karenglenns@roadrunner.com)

Jean Donatone [girlredd@optonline.net](mailto:girlredd@optonline.net)

Kathy Hume [kshume@verizon.net](mailto:kshume@verizon.net)

Tom Baker [associatedreporting@live.com](mailto:associatedreporting@live.com)

Debra Jennings [debraljennings@aol.com](mailto:debraljennings@aol.com)

Kelly Forbes [kjforbes716@gmail.com](mailto:kjforbes716@gmail.com)

Hannah Allen [arii@courtsteno.com](mailto:arii@courtsteno.com)